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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

STEPHANIE MARTIN, Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; DANIEL MARTIN, Real Party in Interest.	A141620 (Contra Costa County Super. Ct. No. MSD13-01239)

THE COURT:[1]

Petitioner seeks writ relief from an order of the Contra Costa County Superior Court denying her Code of Civil Procedure section 170.6 motion seeking to disqualify the trial judge in a dissolution of marriage action. We grant the petition by way of this memorandum opinion because "[t]he Courts of Appeal should dispose of causes that raise no substantial issues of law or fact by memorandum or other abbreviated form of opinion." (Cal. Stds. Jud. Admin., § 8.1; see also *People v. Garcia* (2002) 97 Cal.App.4th 847.)

Around December 31, 2013, the matter was assigned to Department 15 without notice to either party. Real party in interest Daniel Martin filed an "at-issue

[1] Before Ruvolo, P.J., Reardon, J. and Rivera, J.

memorandum" in the dissolution around February 18, 2014.[2] On that date, the court scheduled a case management conference for April 4 in Department 15 and mailed the parties a "notice of hearing." On or around February 28, 10 days after the mailing of the case management conference notice of hearing, petitioner filed a challenge to the judge captioned: "Verified Request for Disqualification Pursuant to C[ode of] C[ivil] P[rocedure] § 170.1 [or Alternative Request Under CCP § 170.6]." On or around March 5, 2014, respondent court filed its verified answer, addressing only petitioner's 170.1 challenge, stating it was not biased against petitioner's counsel and indicating the 170. 1 request should be denied. Petitioner withdrew her 170.1 challenge on March 28 and reiterated her request that the court grant her 170.6 challenge.

The superior court docket reflects the section 170.6 challenge was denied on April 1, but no written order was served nor was other notice given the parties. On April 8, the court assigned the 170.1 determination to Solano County Superior Court Judge Garry T. Ichikawa, and noticed the parties. The notice did not mention the 170.6 challenge. Petitioner construed this notice as a denial of her 170.6 challenge[3] and that this writ petition was timely filed on April 23, as required by section 170.3, subdivision (d) because it was filed within 15 days [10 days, plus 5 days for mailing] of the date the notice of assignment was served on her by mail and the notice of assignment is the only writing issued by the trial court that could be construed as a denial of the 170.6 challenge. We agree that the writ petition is timely.

Petitioner contends her section 170.6 petition was timely filed as it was filed on February 28, within 8 days of her receiving notice that the matter had been reassigned

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[2] All dates are to 2014, unless otherwise stated. All statutory references are to the Code of Civil Procedure, unless otherwise indicated.

[3] Judge Ichikawa denied petitioner's alternative 170.1 disqualification motion by ordered entered on May 7. In denying petitioner's section 170.1 request to disqualify Judge Fenstermacher, Judge Ichikawa observed that "[o]n April 10, . . . the court received from the Clerk of the Court a 'not accepted print out' from Judge Susanne N. Fenstermacher that was apparently initialed by her on April 1, and was related to the alternate relief to disqualify under CCP § 170.6." We take judicial notice of this ruling on our own motion. (Evid. Code, § 459.)

from Department 37 to Department 15. (§ 170.6, subd. (a)(2).) In its informal opposition to the petition, real party in interest argues that no peremptory challenge under section 170.6 was ever filed, so that there was nothing to deny. Real party in interest further asserts that if the December 30, 2013 register of action of the superior court reflecting the reassignment to Judge Fenstermacher's courtroom did not give adequate notice, petitioner's alternative section 170.6 challenge statement, embedded in the section 170.1 challenge for cause, was inadequate to trigger the statute. He further contends the March 28 "withdrawal" of petitioner's section 170.1 challenge left no declaration to support a section 170.6 challenge. This last argument is specious.

Assuming that notice of the department reassignment was provided by the February 18 notice of the case management conference, petitioner's filing on February 28 of the document entitled "Verified Request for Disqualification Pursuant to CCP § 170.1 [or Alternative Request Under CCP § 170.6]" was adequate to constitute a challenge under section 170.6, given the policy underlying that statute.

"Section 170.6 guarantees 'to litigants an extraordinary right to disqualify a judge. The right is "automatic" in the sense that a good faith *belief* in prejudice is alone sufficient, proof of facts showing actual prejudice not being required. [Citations.]' [Citations.] The object of this section is to provide the party and attorney with a substitution of judge to safeguard the right to a fair trial or hearing. [Citation.] This section is intended to ensure confidence in the judiciary and avoid the suspicion which might arise from the belief of a litigant that the judge is biased where such belief is difficult, if not impossible, to prove. [Citation.] *The section is liberally construed and the trend is to grant relief unless absolutely forbidden by statute.* [Citations.]" (*People v. Superior Court (Maloy)* (2001) 91 Cal.App.4th 391, 394-395, original italics & italics added.) In light of this liberal construction principle, the February 28 challenge is reasonably read both in its caption and in its body, as both a challenge for cause under section 170.1 *and* a timely peremptory challenge under section 170.6.

The verified declaration of petitioner stated in pertinent part: ". . . I am concerned and believe the Honorable Susanne Fenstermacher may not be impartial toward my

attorney and his representation of my interests." The declaration was sufficient in form. (See §§ 170.6, subd. (a)(6) ["Any affidavit filed pursuant to this section shall be in substantially the following form"]; 170.6, subd. (a)(7) ["Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above"].) The substance of petitioner's declaration in the verified request substantially complied with the requirements of section 170.6.

"This court reviews an order granting or denying a peremptory challenge pursuant to section 170.6 for an abuse of discretion. A trial court abuses its discretion when it erroneously denies a motion to disqualify a judge. [Citation.]" (*People v. Superior Court* (*Maloy*), *supra*, 91 Cal.App.4th at p. 395.) It appears the court here abused its discretion in denying the alternative 170.6 challenge.

In accordance with our prior notification to the parties that we might do so, we will direct issuance of a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) Petitioners' right to relief is obvious, and no useful purpose would be served by issuance of an alternative writ, further briefing and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1240-1244.)

DISPOSITION

Let a peremptory writ of mandate issue directing respondent court to vacate the order of April 1, 2014, in superior court case number MSD13-01239, entitled *In re the Marriage of Daniel Martin and Stephanie Martin*, denying the disqualification motion brought by petitioner Stephanie Martin pursuant to Code of Civil Procedure section 170.6, and enter a new order granting the motion for disqualification under that section and transferring the case from the Honorable Susanne N. Fenstermacher to a different judge.

To prevent further delays in the superior court proceedings, this decision shall be final as to this court 10 court days after its filing. (Cal. Rules of Court, rule 8.490(b)(2).)

Petitioner shall recover her costs in connection with bringing this petition. (Cal. Rules of Court, rule 8.493(a)(1)(A).)